

REMARKS

Claims 20-22, 28-29, and 32-45 are pending in this case. Claims 1-19, 23-26, and 30-31 have been cancelled in view of the prior Restriction Requirement. In addition, claim 20 has been amended; claims 23-27 have been cancelled; and new claims 32-45 have been added to advance the prosecution of the subject case. Support for the claim amendments can be found in the original specification including claims. Applicants respectfully request that the subject application be reconsidered in view of the above amendments and the following remarks.

Claims 20-24 and 26-29 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Sanders et al. (US Patent 5,290,289). This rejection is respectfully traversed.

Independent 20 is directed to a method of providing a constant or substantially constant force for correcting spinal deformities. As is recited in claim 20, the correction force is generated by a superelastic material and has a predetermined amount. The correction force is maintained at the predetermined amount until the spinal deformities are fully or substantially fully corrected. Because the correction force is generated by a superelastic material in the claimed invention, no heating is required to either generate the correction force or maintain such force at the predetermined amount.

The cited portions of Sanders do not teach, at least, “providing a correction force ... generated by a superelastic material,” as is recited in independent claim 20. In contrast, Sanders teaches using a metal rod with shape-memory and heating the metal rod to provide corrective forces. Moreover, the cited portions of Sanders do not teach “providing a constant or substantially constant force for correcting spinal deformities” and “maintaining the correction force at [a] predetermined amount until the spinal deformities are fully or substantially fully corrected” as recited in independent claim 20. Conversely, Sanders teaches controlling the amount of heat transferred to the metal rod

and producing the corrective forces gradually, to minimize the stress borne by the fixation points and the probability of failure at the bone-metal interface (see, col. 7, ll. 46-51). Therefore, Sanders does not teach independent claim 20.

In view of the above, independent claim 20 patentably distinguishes over Sanders. Accordingly, the subject rejection is believed to have been overcome.

Claims 20-25 and 28-29 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Cool et al. (European Patent Application 0 470 660 A1). This rejection is respectfully traversed.

The cited portions of Cool do not teach, at least, “providing a correction force ... generated by a superelastic material,” as is recited in independent claim 20. The cited portions of Cool teaches correcting the shape of a spinal column by using a rod consisting of material with shaped memory (see, col. 1, ll. 1-6). As the Office action acknowledges, Cool teaches activating the corrective force by (user’s body) heat. Therefore, independent claim 20 patentably distinguishes over Cool. Accordingly, the subject rejection is believed to have been overcome.

Claims 20-24 and 28-29 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Drewry et al. (US Patent 6,783,527). This rejection is respectfully traversed.

Drewry teaches a device for stabilizing a spinal column. The cited portions of Drewry are silent as to either “providing a constant or substantially constant force for correcting spinal deformities” or “maintaining the correction force at the predetermined amount until the spinal deformities are fully or substantially fully corrected,” as is recited in independent claim 20. Therefore, independent claim 20 is not taught by Drewry and thus patentably distinguishes over Drewry. Accordingly, the subject rejection is believed to have been overcome.

New claims 32-35 depend from independent claim 20. New claims 36-45 each recite one or more features similar to those in independent claim 20 as discussed above. Accordingly, new claims 32-45 are believed to be allowable for at least the same reasons that claim 20 is allowable.

Applicants have shown that claims 20-22 and 28-29 and new claims 32-45 are patentable over the cited art and hereby respectfully request that the rejections of these claims be withdrawn. Each of these pending claims in this application is thus believed to be in immediate condition for allowance and such action is earnestly solicited.

Finally, applicants wish to submit the following with respect to the election requirements in the May 16 Office Action. When making the election requirements, the Office Action stated that "[c]urrently, no claims appear to be generic" (see page 2 of the May 16 Office Action). Applicants respectfully submit that the claims as originally filed in fact contain a number of generic claims, including at least independent claims 1, 19, and 20. Each of the generic claims reads on the various species shown in the drawings.

Respectfully submitted,

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By  (40,414)
Hua Gao Reg. No.: 40,414

DICKSTEIN SHAPIRO LLP
1177 Avenue of the Americas
41st Floor
New York, New York 10036-2714
(212) 277-6500
Attorneys for Applicant